

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 18-00960 RB/CG
(No. CR 16-00580 RB)

JOSE REMBERTO GUZMAN-DOMINGUEZ,

Defendant.

ORDER

THIS MATTER is before the Court on Petitioner Jose Remberto Guzman-Dominguez's *Notice of Motion and Motion Under Fed. R. Civ. P. 60(b)(4) and 5 U.S.C. §§ 552a for a Writ of Coram Nobis* ("Notice and Motion"), filed October 16, 2018. (CV Doc. 1; CR Doc. 206). The Court has also reviewed the docket and proceedings in Petitioner's criminal case, (No. CR 16-00580 RB).

Petitioner's Notice and Motion states that he seeks to "collaterally attack [his] conviction and sentence." (CV Doc. 1 at 15). He asks the Court for "relief in the form of immediate release or in the alternative for a new trial or modification of sentence." (CV Doc. 1 at 14). The Court intends to recharacterize Petitioner's Notice and Motion as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. See *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996) ("The exclusive remedy for testing the validity of a judgment and sentence, unless it is inadequate or ineffective, is that provided for in 28 U.S.C. § 2255"). Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when

a court recharacterizes a pro se litigant's motion as a first § 2255 motion . . . the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will

be subject to the restriction on “second or successive” motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Petitioner that it intends to recharacterize his Notice and Motion as a first § 2255 motion and afford him an opportunity to withdraw the Notice and Motion or to amend it to add additional claims he may have. See Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: “(1) specify ***all grounds*** for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.” (emphasis added)). If Petitioner fails to timely amend or withdraw his Notice and Motion, then Petitioner’s Notice and Motion will be recharacterized and any subsequent § 2255 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS THEREFORE ORDERED that Petitioner Jose Remberto Guzman-Dominguez is **GRANTED** leave to amend or withdraw his Notice and Motion (CV Doc. 1; CR Doc. 206), which the Court intends to recharacterize as a first motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, by **November 9, 2018**.

IT IS FURTHER ORDERED that the Clerk of the Court mail Petitioner a copy of this Order, together with a form § 2255 motion and instructions.



THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE